

LAW AND ORDER IN POLYNESIA. H. Ian Hogbin. Harcourt, Brace and Co., N. Y. 1934.

To the law student and the lawyer engaged in untangling the complexities of legal science as it exists in our modern society, a reference to law as it is applied in a primitive society seems as remote as the islands of the Pacific on which this survey was made. The error that lies in this view is resolved upon reading the first few chapters of Dr. Hogbin's book. We soon realize that we are reading about human beings, each having his own life to live, and that they too have developed rules of conduct among themselves, in the hope that each individual may enjoy life to the fullest extent possible under such conditions without infringement upon the equal right of his neighbor.

Most people regard savage life as one that is absolutely free from law. Even scientists for a long time attempted to find what it was that took the place of law in primitive society. Savage life certainly does not boast of institutions existing for the sole purpose of enforcing law and maintaining order, but as Dr. Hogbin shows us, the whole social order rests "upon a complex interaction of stimuli which combine to make it worth the individual's while to carry out even distasteful obligations." The most important of these obligations is the "reciprocal nature of social cooperation." It is their reciprocity which is chiefly responsible for their whole system of civil law, or rather the system "of binding obligations governing the intercourse of daily life and enforced by a specific mechanism inherent in the structure of the society." Thus we learn that our belief that there is no such thing as law in savage society is based on the too narrow conception that law is a series of express commands, or is the outcome of a purposive effort.

Dr. Hogbin's survey was made in Ontong, Java, a small group of coral islands in the Western Pacific Ocean, and although civilization has begun to affect the people, there is enough of the primitive order remaining, when augmented by descriptions given by the older members of the tribes, to afford ample field for this study.

The people are divided into two tribes which, in turn, are divided into joint family groups. Since the tribes gather as a unit only for the annual religious festival, called the *sanga*, the principal study is of the joint family. These joint families are composed of several individual family units. The members of these units combine in the effort to obtain food and shelter for the entire group. It is the economic necessity that maintains the unity of the family. The oldest man is the leader of the group and is responsible for its prosperity. This head man not only directs the various economic activities but also exercises his authority

toward the maintenance of order in the family. The children are educated partially by the collateral relatives of their parents and refer to these relatives by parental terms. The reciprocal duty of each adult member to contribute to the education of his brother's and sister's children largely accounts for the perpetuation of the family concept. The economic pressure which is quickly brought to bear on the individual who shirks his duties secures cooperation among the members. This pressure is applied by leaving him out when the head man distributes the food. If this pressure does not force the recalcitrant individual into line, the head man may expel him from the group and he will have to fend for himself.

Besides the duties of a man to members of his own family, there is a reciprocal duty between him and the family of his wife. "Assistance has to be given to them when it is required and presents of food have to be made from time to time. In return, the husband can demand assistance from his wife's relatives and may rely upon them to help him support his family." Individual prestige is increased by making gifts to relatives, and censure may be invoked if such gifts are not made. In order to make these gifts, it is often necessary to have the assistance of the joint family, so obedience to the head man is secured through the future as well as the present requirements of the individual.

With the possible exception of stealing from the family-owned coconut groves, there are no crimes which are regarded as offenses against society. All other crimes are offenses against the individual or his immediate family. As a result the offender often suffers no worldly punishment. Not infrequently, however, the person offended takes matters into his own hands. The group does not approve of this kind of punishment, but even if death results, the avenger will not be punished. It is believed that the *kipua*, or spirits will punish the criminal, but if he persists in his offenses the headman may expel him. Sex crimes are especially opprobrious to these people and every effort is made to prevent them. Even in childhood, brothers and sisters are not permitted to be in each other's company alone. The wide family concept carries this mutual avoidance to cousins of several degrees and even to sisters of a man's wife.

Spirits, the *kipua*, have an important effect on the conduct of the savages. Through fear of sickness and death, as well as other misfortunes, they compel the carrying out of the reciprocal duties to different members of the family, and punish criminals. Spirit mediums, *koulaiku*, advise sick and unfortunate persons as to the cause of their misfortune. Their advice is nothing more than a reflection of what the community

regards as the reason for the punishment being inflicted by the angered *kipua*. The *koulaiku* know all about the daily lives of the tribesmen and, from the gossip of the community regarding the commission or omission of an unsocial act, can tell him what is responsible for his misfortune. Every effort is then made by the unfortunate man's family to appease the angered spirit by making large gifts to whomsoever he has offended. Fear of the consequences which the spirits may cause to descend upon them is thus an important factor in keeping the conduct of the people up to a certain standard.

Sorcery is very rare here and is practiced only for vengeance by the sorcerer himself. He is never asked to apply his powers on behalf of others. Nevertheless, the people have a firm belief in the ability of the sorcerers to carry out their hideous designs.

The tribe is held together by the annual ceremony called the *sanga*. This ceremony lasts for thirty days and consists in an elaborate worship of the gods who are believed to have been the first natives of the islands. The ceremony signifies their theory of the Creation, and like those of other primitive peoples is based largely on procreatin. Priests, called *maakua*, preside over the ceremonies. They are the head men of the joint families.

Shortly before the islands were taken over by the British, one of the savages organized a body of supporters and set up a kingship, which has existed for a few generations. The king, though acting as arbiter in many instances, does not have a great deal of power. He does exercise a slight degree of authority over the daily life of the tribe, and there is evidence of the concept of the "King's peace."

One of the most significant facts to be noted in the study of the submission of these savage peoples to law and order is, that although authority seems to be vested in certain approved leaders, yet these leaders may not exceed certain bounds. For example, the head man of a joint family may not use his office for his own personal gain or revenge to the detriment of the group, without fear of deposition or possibly death. The *koulaiku*, interpreting the spirits, merely reflects the feeling of the community, and the king does not interfere where popular will is not in accord. Even a sorcerer may be held in check where he uses his black magic for unjustifiable ends through the danger of being speared by relatives of the person against whom he is working.

In the last few chapters of Dr. Hogbin's work, we are taken to other islands of the Pacific where the people have advanced in a slight degree over the Javanese. In these islands, such as Tonga, and Hawaii, the people have established kingdoms, and there is a marked development of

positive law On these islands we find the beginnings of a council of state, and there are other examples of the rise of institutions for the enforcement of law.

For centuries men have speculated on how law grows, and the place law should have in society. Numerous theories have developed out of this speculation but no theory can be adequately constructed today without taking into account the materials offered by sociology and anthropology. For those who would construct a theory, the book under review is a worthy companion of Malinowski's "Crime and Custom in Savage Society," and Sumner's "Folkways."

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MR. JUSTICE CARDOZO. Joseph P Pollard. York Press, N. Y
1935.

A powerful mind, comparing the oft'times technical and unjust results of cold logic with the broader sociological view point, tempering the effects of antique precedent with a modern perceptive, looking behind the maxims and axioms of a so-called legal science to bring more realism into the law—that is one's impression of the intellect of Judge Benjamin Cardozo as presented by Joseph P Pollard in his book, *Mr Justice Cardozo*.

The far-flung ramifications and ever-increasing complexity of our present economic life place a gigantic burden upon those men whose task it is to settle our legal controversies in a manner that seems socially just; for it is many times difficult to render such decisions without breaking down precedent or at least straining the interpretation of a body of law which our legislatures are too busy to modernize. Thus it is that we enthusiastically welcome a word picture of a living master, who dares with bold strokes to alter the legal pattern to fit our present social and economic necessities.

For over twenty years Justice Cardozo has been on the bench, eighteen of these being spent in the New York Court of Appeals from which he was elevated in 1932 to the Supreme Court of the United States. Many cases in all fields of the law have come before him. Mr. Pollard has classified the multitudinous decisions of Justice Cardozo in both the New York Court of Appeals and the United States Supreme Court so that in each field we may study his efforts compositely. In this way we see how a great judge looks upon a particular branch of the law; and we see how he manipulates his knowledge, ever aiming toward a good result despite technical and historical obstacles.